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United States General Accounting Office

Report to the Chairman, Subcommittee on Immigration, Refugees, and International Law, Committee on the Judiciary, House of Representatives

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REFUGEE PROGRAM

The Orderly Departure Program From Vietnam

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United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

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The Honorable Bruce A. Morrison
Chairman, Subcommittee on Immigration,
Refugees, and International Law
Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

This report responds to your request that we evaluate the Immigration and Naturalization Service's (INS) practices and procedures for adjudicating the cases of Vietnamese refugee applicants. You asked us to (1) determine why approval rates for Vietnamese refugee applicants were apparently low, (2) evaluate the quality and consistency of the INS adjudication process, and (3) determine if denied refugee applicants' files adequately reflected the bases for the examiners' decisions. We also determined whether Vietnamese of special interest to the United States were being interviewed by INS examiners.

Results in Brief

We found that approval rates for Vietnamese refugee applicants dropped from 100 percent during October 1988 through January 1989 to an average of about 36 percent during the next 6 months beginning in February 1989. This drop in approval rates occurred because of an August 1988 decision by the Attorney General that the INS should begin applying its worldwide guidance for overseas refugee processing in granting refugee status to Vietnamese applicants. The Attorney General's decision meant that Vietnamese applicants would no longer be given an automatic presumption of refugee status simply because they were living in Vietnam, but would have to assert fear of persecution and a credible basis for such a fear.

Although the Attorney General's decision resulted in a drop in the number of applicants granted refugee status, it did not result in fewer Vietnamese being offered entry into the United States. Most of those denied refugee status were offered entry into the United States as Public Interest Parolees.

We found that the INS refugee adjudication process in Vietnam was generally thorough and consistent, and performed by experienced and well-trained examiners. Our review indicated that reasons for denial of refugee status were documented in the files for 87 percent of the cases we

reviewed and INS officials informed us that they have taken action to assure that subsequent denial decisions are adequately documented.

At the time of our visit to Vietnam in July 1989, many Vietnamese of special concern to the United States, such as individuals with a previously close association with the United States who had been detained in Vietnamese re-education camps, were not being allowed by the Vietnamese government to be interviewed by INS examiners. However, an agreement was reached on July 30, 1989, between the U.S. and Vietnamese governments that, beginning in October 1989, INS examiners could interview such individuals. Department of State and INS officials reported that about 4,830 such individuals were interviewed from October 1989 through January 1990.

The Orderly Departure Program

The Orderly Departure Program (ODP) was established under a 1979 Memorandum of Understanding between the United Nations High Commissioner for Refugees and the government of Vietnam to provide a safe and legal means for people to leave Vietnam rather than clandestinely by boat. The agreement provides for the departure of immigrants and refugees for family reunion and humanitarian reasons. In addition to serving as an orderly, predictable means for those wishing to depart the country, it also serves to relieve the flow of refugees into first asylum countries and to save the Vietnamese government the embarrassment of the uncontrolled illegal exodus of thousands of its citizens.

The Memorandum of Understanding established a selection process for those authorized to depart Vietnam based on exchanges of lists between the Vietnamese government and the receiving countries, such as the United States. Under the process, receiving countries submit to the Vietnamese government a list of those for whom entry visas would be granted. Vietnam, in turn, provides the country with a list of those eligible for exit visas. The United States processes for entry only those whose names appear on both lists. Individuals whose names appear on only one of the two lists could be subject to discussions between the Vietnamese and U.S. governments.

Vietnamese can travel to the United States under the ODP as immigrants, following normal U.S. visa issuance procedures, or as refugees. The Departments of State and Justice developed three basic categories of Vietnamese refugees eligible for entry under the ODP.

Category I: Family members of persons in the United States not currently eligible for immigrant visas.

Category II: Former employees of the U.S. government.

Category III: Other persons closely associated or identified with the United States' presence in Vietnam before 1975,[1] including children of American citizens in Vietnam (Amerasians) and their immediate family members.

ODP Application Procedures

The ODP Office at the U.S. Embassy in Bangkok, Thailand, administers the program, augmented by staff of the International Catholic Migration Commission. Vietnamese who rely on normal immigration channels must have a relative in the United States obtain and file immigrant visa petitions (INS Form I-130) with their local INS office. Approved petitions, along with affidavits of relationships and other documents from sponsoring relatives, are then sent to the ODP Office in Bangkok to serve as immigrant visa case files. Refugee applicants still in Vietnam or their relatives in the United States may directly petition the ODP Office in Bangkok for refugee status. (Refugees already in the United States may petition to have their spouses and children join them by filing a Visa 93 petition with their local INS office.)

After receiving the petitions, the ODP Office in Bangkok issues Letters of Introduction to immigrant applicants in Vietnam. This occurs when their visa eligibility dates become effective or are nearing the effective dates. Refugee applicants whose case files indicate their eligibility for refugee status, are also sent Letters of Introduction. A Letter of Introduction is a document which states that the United States is willing to interview the individual for possible acceptance and movement through ODP, but it is not a guarantee of approval. Letter of Introduction holders normally present the documents to the Vietnamese authorities as a preliminary step in obtaining exit permissions and pre-departure interviews with INS and State officials.

The ODP Office periodically receives from the Vietnamese government names of people it will allow the INS and consular officials in Ho Chi Minh City (previously Saigon) to interview. Upon receipt of these names, ODP staff in Bangkok review the cases to determine which ones

[1]The United States withdrew its remaining military forces and civilian presence from Vietnam after the fall of the South Vietnamese government in April 1975.

are eligible for the ODP and what further documents or information are necessary. Once the files are complete, the ODP Office requests the Vietnamese government to make those applicants available for interview during one of the upcoming interview sessions.

Teams of INS and State consular officers travel to Ho Chi Minh City each month to interview ODP applicants made available to them by the Vietnamese authorities. Those applicants with successful interviews must also undergo a medical examination. If the successful applicants pass the medical examinations, the ODP Office in Bangkok transmits final approval of the applicants' petitions to the Vietnamese authorities through the United Nations High Commissioner for Refugees. Approved applicants are then booked on a flight to Bangkok by the Vietnamese government. Amerasians and some refugee applicants are booked on direct flights from Vietnam to Manila to attend the English as Second Language/Cultural Orientation program in the Philippines.

Vietnamese can enter the United States under ODP for family reunification reasons as immigrants or for humanitarian reasons as refugees. Those found ineligible for refugee status can also enter as Public Interest Parolees, a humanitarian program implemented in February 1989 under the authority of the Attorney General and available to those able to prepay their travel expenses and obtain affidavits of support from sponsors in the United States.

Many of those traveling under the ODP are Amerasians and their immediate families. Public Law 100-202, Section 584, often referred to as the Amerasian Homecoming Act, provides that Amerasians and their qualifying family members leaving Vietnam within a 2-year period after March 21, 1988, are entitled to enter the United States as immigrants, but are eligible for all benefits offered refugees, including resettlement and training benefits. To be eligible for admission under the act, Amerasians must have been residing in Vietnam on December 22, 1987, the date the legislation was enacted, and must be able to establish that they were born in Vietnam after January 1, 1962, and before January 1, 1976, and had American citizen fathers.

Fiscal Year 1989 Vietnamese Arrivals

Each year executive branch officials, after consulting with the Congress, establish refugee admissions allocations for the next fiscal year. The fiscal year 1989 ODP allocation was 22,000 admissions to the United States. A total of 17,685 Vietnamese refugees were admitted during the fiscal

year, a shortfall of 4,315. The fiscal year 1990 ODP refugee admissions level has been set at 26,500.

State officials informed us that the fiscal year 1989 admissions shortfall resulted from fewer former re-education camp detainees and U.S. government employees being interviewed for refugee status than anticipated, and from the unforeseen award of Public Interest Parole to many who, before February 1989, would have been awarded refugee status. (Parolees do not count against refugee admission allocations.)

Until February 1989, INS officers conferred refugee status on virtually all applicants in Vietnam based on the presumption that they met the definition of a refugee as specified in the Immigration-Nationality Act of 1980. However, in February 1989, INS began to apply worldwide standards for refugee determination. This change resulted from an August 1988 decision by the Attorney General that INS should uniformly apply the regulations of existing statutes regulating immigration processing. The change meant that INS would no longer work from a presumption that Vietnamese applying for ODP meet the definition of refugee. The decision also provided that those not granted refugee status could be considered for entry to the United States under the Attorney General's parole authority.

Refugee Denial Rates Do Not Reflect a Drop in ODP Activity

The Attorney General's decision to adjudicate refugee cases strictly in accordance with INS Worldwide Guidance for Overseas Refugees Processing resulted in a sharp drop in the number of applicants granted refugee status. However, most of those denied refugee status did not originally apply to ODP as refugees. Most would have been immigrant visa applicants but their visa petitions were not yet current, and were considered for refugee status for family reunification reasons. Those denied refugee status were offered Public Interest Parole.[2] Thus, simply because refugee denial rates were up does not mean that fewer Vietnamese were leaving Vietnam under the ODP.

While no refugee applicants were denied refugee status during INS' first three interview trips in fiscal year 1989, the denial rate averaged 63.6 percent during the next six trips. However, our analysis of agency data, as reflected in Table 1.1, shows that during this latter period the

[2]Those offered parole are primarily the sons and daughters of immigrants and former re-education camp detainees holding current visa petitions, according to State Department officials.

number of immigrant approvals increased and those not adjudicated as refugees were granted parole.

Table 1.1: Orderly Departure Program Decisions

Interview trips, FY 1989	Approved immigrants	Refugee Adjudications: Refugee approvals	Percentage	Parole offers	Percentage	Total[a]
Oct 1988	601	1,180	100	—	—	**1,781**
Nov 1988	513	1,123	100	—	—	**1,636**
Jan 1989	195	335	100	—	—	**530**
Feb 1989	1,100	198	26	551	74	**1,849**
Mar 1989	863	169	20	661	80	**1,693**
Apr 1989	871	193	35	363	65	**1,427**
May 1989	625	225	49	234	51	**1,084**
Jun 1989	826	352	46	416	54	**1,594**
Jul 1989	1,110	386	42	526	58	**2,022**
	6,704	**4,161**		**2,751**		**13,616**

[a]Excludes pending cases and those found to be ineligible for the ODP program for reasons such as health or failure to meet basic qualifications. Figures also exclude approved Amerasians and their relatives. (They are accounted for as a separate program element.)

We found that those denied refugee status beginning in February 1989 were routinely offered Public Interest Parole giving them the opportunity to travel to the United States, provided they prepaid airline tickets and had affidavits of support from relatives or agency organizations in the United States. ODP officials in Bangkok informed us that most of those offered Public Interest Parole program were accepting the offers. Table 1.2, based on agency information available as of July 1989, gives an indication of the proportion of Vietnamese accepting the parole offer.

Table 1.2: Eligible Vietnamese Offered and Accepting Parole as of July 1989

1989 Interviews	Number departed	Travel expenses paid, not yet departed	Travel expenses not yet paid	Total approved for parole
February	117	376	57	550
March	59	402	180	641
April	0	285	55	340
May	0	200	33	233
Total	**176**	**1,263**	**325**	**1,764**

INS and State officials told us that the majority of the refugees emigrating to the United States through ODP were category I immigrant visa petitioners, adjudicated as refugees for family reunification purposes. Relatively few were categories II or III individuals. According to State

officials, individuals in these latter categories are at risk of being persecuted by Vietnamese authorities, and were being generally barred from access to INS interviewers by the Vietnamese government. State Department statistics show that during fiscal year 1989 a total of 9,018 refugees were admitted through the ODP. This included 132 former U.S. government employees, and 64 former re-education camp prisoners, along with 253 accompanying relatives.

We observed 41 INS interviews of ODP applicant families in Vietnam during July 14 to 20, 1989. The cases involved a total of 248 persons. The petitioners were U.S. citizens in 34 cases, and permanent resident aliens in the other 7. Table 1.3 shows how the 248 persons were processed.

Table 1.3: Our July 1989 Observations of ODP Applicants

Disposition	Number	Percent
Approved for immigrant visas	57	23
Approved as refugees	71	29
Offered Public Interest Parole	105	42
Decision pending more information	11	4
Not qualified under INS status	4	2
	248	**100**

INS officers in Vietnam told us that before February 1989, individuals who were denied immigrant status, but were otherwise eligible, would have been interviewed as refugees for family reunification reasons and approved for entry into the United States. However, because of the Attorney General's decision, only 71, or 29 percent, were granted refugee status after February 1989.

U.S. and Vietnam Governments Negotiated Access to Refugees

Although ODP was intended to provide a means of emigration for both family reunification and humanitarian reasons, most cases made available by the Vietnamese government were those involving family reunification. U.S. officials told us that only about 300 categories II and III refugees were gaining access to ODP per year, and that the Vietnamese government was controlling the number allowed to emigrate.

In July 1989, representatives of the governments of the United States and Vietnam negotiated an agreement whereby more individuals would be released from re-education centers and their families would be allowed to emigrate. The agreement, announced on July 30, 1989, provided for the United States to begin interviewing former re-education

center detainees in October 1989. The agreement set a goal of 3,000 former detainees and dependents to be interviewed before the end of 1989, and 12,000 more were expected to be interviewed in 1990.

INS officers confirmed that the October 1989 ODP interview team began interviewing former detainees in Vietnam in accordance with the July 30 agreement. State Department's Bureau of Refugee Programs figures indicate that officials interviewed a total of 4,830 former detainees from October 1989 through January 1990, thus meeting initial expectations. Bureau of Refugee Programs and INS officials told us that the program was proceeding smoothly.

The Bush administration has established a fiscal year 1990 admissions ceiling of 26,500 for those departing Vietnam under ODP. This is an increase of 4,500 over the fiscal year 1989 allocation of 22,000, due partly to expected increased accessions of former re-education detainees and their accompanying relatives.

ODP Applicant Processing Thorough and Consistent, but Decisions Not Always Documented

The ODP interview team we accompanied to Vietnam in July 1989 included three officers from INS' District Office in Bangkok.[3] We interviewed the officers to determine their experience, training, and qualifications for adjudicating ODP refugee cases, and observed a total of 41 cases to determine if the officers asked similar questions and used similar bases for adjudicating their assigned cases.

Each officer was trained and experienced in refugee processing procedures, and knowledgeable about country conditions in Vietnam and throughout Southeast Asia. The officers averaged 18 years of service with INS, each had previous interview team assignments in Vietnam, and had recently received refresher training in Bangkok, including State Department briefings on country conditions in Vietnam and Southeast Asia.

The officers uniformly applied INS and ODP guidelines in adjudicating their cases. Each asked a variety of questions designed to elicit information about family relationships, living conditions, work and educational circumstances, government policies and practices, and the individuals' statements on, or fears of, persecution. In addition, we observed various

[3]A fourth accompanying senior examiner, assigned to INS Headquarters and on an ODP familiarization visit, adjudicated some cases. The officer was an experienced examiner, with prior refugee adjudication experience in Europe and Thailand.

instances of the officers conferring with each other on complex or difficult cases.

INS Headquarters and District Office instructions, as well as ODP Office guidance, require the examiners to document the rationale for their decisions to deny refugee status. Our sample of 364 case files of applicants denied refugee status between February and July 1989 revealed that, while most contained sufficient explanations of the examiners' decisions, some did not. For the case files in our study, approximately 87 percent contained adequate bases for the decisions.

Our study showed that 73 percent of the denied applicants were category I immigrant visa petitioners adjudicated as refugees, another 26 percent were Amerasians or their close relatives. Only one denied applicant was a pre-1975 U.S. government employee, which reinforced INS officers' statements to us that virtually no categories II or III refugee applicants were denied refugees status.

Senior INS officials informed us that in light of the number of denied case files without sufficient rationale for the decisions, the Bangkok District Office has begun sampling ODP interview teams' case files upon their return from Vietnam. We were told that the limited sampling procedure was designed as a quality assurance mechanism to ensure that all denied case files contain adequate explanations of the decisions.

Conclusions

The high refugee denial rates in the ODP are not an accurate indicator of the treatment of refugees under the program. INS refugee approvals, or denials with accompanying offers of parole, are primarily mechanisms for resettling Vietnamese families unable to travel under immigrant visas. Almost none of those applying for resettlement on the basis of refugee characteristics were being denied refugee status.

Until recently, few former re-education camp detainees and others of special interest to the United States, who may be eligible for refugee status, were given access to INS interviewers by Vietnamese authorities. The Vietnamese government agreed in July 1989 to allow former re-education detainee and their families to emigrate to the United States. INS officers began interviewing former detainees in October 1989, and the program appears to be proceeding smoothly.

INS officials from the Bangkok District Office were experienced and well-trained, and were processing ODP cases in Vietnam thoroughly and consistently at the time of our visit. Refugee applicants' case files contained the bases for the examiners' decisions in 87 percent of the cases we reviewed, and the INS District office has implemented a file review process, which should further ensure the documentation of denial decisions by its examiners.

Scope and Methodology

We analyzed available agency data on the ODP decisions made during nine trips to Vietnam, covering October 24, 1988 to July 21, 1989, to determine whether approval rates for Vietnamese refugee applicants had dropped during 1989, and if so, why the decline had occurred and whether those denied refugee status were also being denied entry into the United States.

To evaluate the quality and consistency of adjudication processes for Vietnamese immigrants and refugees, we reviewed pertinent legislation and regulations; interviewed officials and reviewed records at INS and Department of State in Washington, D.C., the U.S. Embassy in Bangkok, Thailand, and in Ho Chi Minh City, Vietnam. We analyzed 364 denied refugee case files to determine whether the reasons for denials of refugee status were well documented. In July 1989, we had firsthand observations of the program in Vietnam. We determined the nature and extent of the background and experience of involved INS examiners. We obtained information on access to Vietnamese of special interest to the U.S. government through discussions with State Department, INS, and embassy officials. Our review was performed between June 1989 and December 1989, and was conducted in accordance with generally accepted government auditing standards.

We did not obtain written comments on this report from agency officials. However, we obtained their oral comments and incorporated them as appropriate in the text.

We are sending copies of this report to the Chairmen, House and Senate Committees on the Judiciary; the Attorney General; the Commissioner of INS; and the Director, Office of Management and Budget. We will also make copies available to others upon request.

GAO staff members Harvey J. Finberg, Computer Systems Analyst, and Leroy W. Richardson and David R. Martin, Assistant Directors in the

National Security and International Affairs Division, Washington, D.C., made major contributions to this report. If you or your staff have any questions, please call me at (202) 275-5790.

Sincerely yours,

Harold J. Johnson
Director, Foreign Economic
Assistance Issues

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